

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
DIVISION

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*BidZirk, LLC, et. al.* )  
Plaintiffs, )  
)  
-versus- )  
Philip Smith )  
)  
Defendants. )

C. A. No. 6:06-cv-109

**RULE 26(f) REPORT**

The parties, having consulted pursuant to Rule 26(f), Fed. R. Civ. P., hereby report as follows (check one below):

We agree that the schedule set forth in the Conference and Scheduling Order filed \_\_\_\_\_ is appropriate for this case. The parties' proposed discovery plan as required by Fed. R. Civ. P. Rule 26(f) and the information required by Local Civil Rule 26.03 are attached.

We agree that the schedule set forth in the Conference and Scheduling Order filed \_\_\_\_\_ requires modification as set forth in the attached proposed Consent Amended Scheduling Order (use format of the Court's standard scheduling order attached hereto). The parties' proposed discovery plan as required by Fed. R. Civ. P. Rule 26(f) and the information required by Local Civil Rule 26.03 are attached.

We are unable, after consultation, to agree on a schedule for this case. We, therefore, request a scheduling conference with the Court. The parties' proposed discovery plan as required by 26(f) Fed. R. Civ. P., with disagreements noted, is attached. The information required by Local Civil Rule 26.03 is also attached.

**(SIGNATURE PAGE ATTACHED)**

**Civil Action # 6:06-cv-00109 BIDZIRK vs Smith****Philip J Smith Defendant Rule 26 Answers & Disclosures**

I, the Defendant, give my best answer to Rule 26 disclosures as follows:

The names of fact witnesses likely to be called by *Defendant* and a brief summary of their testimony follow:

**Frank Watts** - owner of inventory majority stake ...Defendant consigned to Bidzirk and professional procurement manager. Frank watts is also a professional eBay lister and has 7 years eBay experience.

**Dave Buzzell** - partner to assist Defendant in consignment of inventory who also witnessed majority of conversations, consignment handoffs, and journalled all events.

**eBay Market Representative** - Defendant (represented Pro Se) is in current contact with eBay to assign a testimonial or representative to testify that Bidzirk may be operating improperly and to certify that documents that are presented in court are eBay recognized.

**Philip J Smith** - testimony will be provided by Defendant who is also Pro Se in this matter.

**Defendant**, who is at this time remaining *Pro Se*, may call other expert and/or factual witnesses.

Defendant denies any claim that Bidzirk was defamed, that any of its trademarks were used improperly, and that any invasion of privacy took place with Defendant's news commentary.

**Defendant holds these truths to be self evident in this matter:**

The Jackwhispers website is NOT a commercial entity and is filed on 2005 tax year as non profit. In fact, the website posted an annual loss because affiliate income did not match hosting and research related costs involved with the website. The website does not generate \$500 in cash revenue. The threshold for non profits is \$1500. The website is maintained as a consumer advocacy. It has been in operation for 4 years. Opposing counsel's reference and smear campaign to indicate that I am a commercial entity is not relevant to this case. Commercial entity defense only applies to a competing venture or a dilution of a name due to a competing venture. No one, reasonably will confuse an editorial and news commentary website with an eBay dropoff. Further, the products promoted on the Jackwhispers website have NO CHANCE in any conceivable way of ever being for sale or consigned to Bidzirk for sale in their business or on eBay. Bidzirk does not

co sponsor or affiliate themselves with Amazon Affiliates Program ... nor do they consign items under \$50. Further, items posted are affiliate links and are for the sole purpose of offsetting domain name and domain hosting costs.

Daniel "Ty" Schmidt and Jill Patterson's ownership of Bidzirk, their marriage, and their likeness are all matters of public domain and public taxpayer and license record.

Bidzirk failed to disclose that splits would reach an average of approximately 50/50 and and also failed miserably to obtain "high dollar" as advertised for the consignments given them.

Bidzirk operates under previously registered eBay IDs and trades their business on a false representation of higher than should be feedback totals and comments.

Ty Schmidt presented what is certified by my bank as a post dated check.

Bidzirk was 4+ months late in making full payment for owed compensation and held inventory worth \$6000 + for 4+ months. Some of this inventory was time sensitive technology items and therefore lost value during Bidzirk's possession.

Defendant, maintains that ruling was essentially made during previous injunction hearing. Bidzirk is continuing frivolous litigation hoping for a technicality or slip up in Defendant's *Pro Se* representation.

Absent special instructions from Judge Cato, I, Philip Smith file these rules and responses.

I ask of the court clerk to keep Philip Smith up to date on other requirements for court submissions by mail.

Philip Smith will file all court requested documents on dates stated by court.

Thank you.

A handwritten signature in black ink, appearing to read "Philip Smith", is positioned at the bottom of the page.